

Message Text

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CA/SCA:LMULLIN
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R 040041Z MAY 78
FM SECSTATE WASHDC
TO AMEMBASSY JIDDA
INFO USLO RIYADH
AMCONSUL DHAHRAN

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E.O. 11652:N/A

TAGS: CGEN. PDIP, SA, US

SUBJECT: PROPOSED BILATERAL CONSULAR CONVENTION

REF: (A) JIDDA 1876, (B) JIDDA 1877, (C) JIDDA 2983

1. DEPT. HAS CAREFULLY REVIEWED COMMENTS FORWARDED REFTELS A AND B AND SUBMITS ITS RESPONSES BELOW. DEPT. HAS DECIDED TO RAISE PROPOSED CHANGES WITH THE SAUDIS WHEN NEGOTIATIONS COMMENCE, RATHER THAN TO PREPARE A NEW TEXT FOR TRANS-MISSION TO THE SAUDIS AT THIS TIME. IT IS BELIEVED THAT CONSIDERABLE TIME CAN BE SAVED BY FOLLOWING THIS LATTER COURSE TO AVOID REOPENING OF THE WHOLE INITIATIVE. THE SAUDIS HAVE ALREADY BEEN ADVISED THAT THE INITIAL DRAFT WOULD BE SUBJECT TO MODIFICATION DURING THE NEGOTIATING
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PROCESS.

2. ARTICLE 1(1). DEPT. CAN NOT AGREE TO MAKING SUGGESTED CHANGE IN DEFINITION OF TERM "CONSULATE", SINCE TO DO SO WOULD RAISE IMPLICATION THAT A CONSULAR SECTION WHICH IS PART OF AN EMBASSY IS A SEPARATE MISSION. DEPT. DOES NOT BELIEVE THAT SUCH RECOGNITION WOULD BE IN THE BEST INTERESTS

OF THE U.S. DIPLOMATIC MISSION. FURTHERMORE, PRESERVATION FOR CONSULAR SECTION OF DIPLOMATIC MISSIONS OF RIGHTS, PRIVILEGES AND IMMUNITIES EXTENDED TO CONSULATES UNDER THE

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CONVENTION IS ADEQUATELY HANDLED IN ARTICLE 46.

3. ARTICLE 1(11). DEPT. CAN NOT AGREE TO ELIMINATION OF THE EXCLUSION OF MILITARY AIRCRAFT FROM THE DEFINITION OF "AIRCRAFT OF THE SENDING STATE". THE PROVISIONS OF THE TREATY RELATING TO PERFORMANCE OF CONSULAR FUNCTIONS IN AN AIRCRAFT BEAR LITTLE RELATIONSHIP TO THE ISSUE OF EXTENSION OF COURTESY, CITED IN PARA 2 REF A; CONSEQUENTLY THE SUGGESTED CHANGE WOULD NOT HAVE THE EFFECT SOUGHT BY THE EMBASSY. FURTHERMORE, THE IMPLICATION WOULD BE RAISED THAT THE RECEIVING STATE HAS RIGHT TO TAKE CERTAIN MEASURES ABOARD MILITARY AIRCRAFT AND SUCH STATE OF AFFAIRS IS NOT PERMISSIBLE.

4. ARTICLE 39(5). DEPT. HAS ADOPTED THE CHANGES SUGGESTED IN SENTENCES 2 AND 3 OF THIS PARA.

5. ARTICLE 26(2). RE DHARAN'S COMMENTS RESPECTING OVERLY RESTRICTIVE NATURE OF THIS PROVISION VIS-A-VIS PERFORMANCE OF CONSULAR FUNCTIONS OUTSIDE THE CONSULAR DISTRICT, ARE THERE ANY REAL PROBLEMS OF THE MOMENT, OR IS THE OBSERVATION LIMITED OFFICIAL USE

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TION MORE HYPOTHETICAL IN NATURE? IF THE LATTER IS THE CASE, DEPT. BELIEVES THAT TEXT SHOULD REMAIN AS IS, SINCE IT REPRESENTS CUSTOMARY PRACTICE OF LONG-STANDING.

6. ARTICLE 29(6). DEPT. IS AGREEABLE TO ADDING THE FOLLOWING SENTENCE AT THE END OF PARA 6: "IF HE DEEMS IT NECESSARY HE MAY BE ACCOMPANIED BY AN INTERPRETER."

7. ARTICLE 39(5). DEPT. FAVORS GREATER FREQUENCY FOR CONSULAR VISITS TO PRISONERS.

8. ARTICLE 39(7). DEPT. IS SYMPATHETIC TO THE PROPOSAL TO BROADEN SCOPE OF THIS ARTICLE, BUT QUESTIONS WHAT "GOODS" CONSULAR OFFICER WOULD PROVIDE DETAINED NATIONAL OTHER THAN THOSE MENTIONED IN THE PRESENT DRAFT.

9. ARTICLE 39(9). DEPT. AGREEABLE TO RESTRUCTURING THIS PARA SO THAT THE RIGHT OF A CITIZEN TO LEAVE A RECEIVING STATE WITHOUT THE NECESSITY OF OBTAINING FURTHER DOCUMENTATION WOULD BE EXTENDED TO PERSONS WHO ARE NOT DUAL NATIONALS. IN THIS CONNECTION DEPT. IS ALSO AGREEABLE TO SPECIFYING THAT WITHHOLDING OF AN EXIT VISA CONSTITUTES

A KIND OF "LIMITATION OF PERSONAL FREEDOM".

10. ARTICLE 41(2). DEPT. HAS AMENDED THE FIRST SENTENCE

OF PARA 2: "THE CONSULAR OFFICER MAY, IN ACCORDANCE WITH THE LAW OF THE RECEIVING STATE, APPEAR...AS THE CONSULAR OFFICER DEEMS IT NECESSARY HE MAY BE ACCOMPANIED AT SUCH AN APPEARANCE BY AN INTERPRETER".

11. ARTICLE 43 AND 44. DEPT. REQUESTS FURTHER CLARIFICATION OF THE PROBLEM RELATING TO PRIVATE YACHTS AND OTHER PRIVATE VESSELS WHICH ARE FORCED INTO TERRITORIAL WATERS AND WHICH MIGHT BE CHARGED WITH ILLEGAL ENTRY. IT WOULD SEEM THAT ARTICLE 43 ALREADY COVERS THIS TYPE OF LIMITED OFFICIAL USE

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EMERGENCY.

12. ARTICLE 45(3). DEPT. IS AGREEABLE TO AMENDING PARA 3 AS FOLLOWS: "CONSULAR OFFICERS AND CONSULAR EMPLOYEES WHO ARE NATIONALS OF THE SENDING STATE MAY NOT CARRY ON ANY PROFESSION OR UNDERTAKE ANY ACTIVITY FOR PERSONAL PROFIT IN THE TERRITORY OF THE RECEIVING STATE OTHER THAN FOR OFFICIAL DUTIES OR, WITHOUT PREJUDICE TO EXECUTION OF THE CONSULAR FUNCTIONS AUTHORIZED UNDER THIS AGREEMENT, INTERFERE IN THE INTERNAL AFFAIRS OF THE RECEIVING STATE.

13. RE REQUEST CONTAINED PARA 3, REF B, DEPT. SEES NO BASIS FOR OUTRIGHT PROHIBITION OF NON-JUDICIAL OR NON-CRIMINAL DETENTION, BUT BELIEVES THAT THE PROBLEM WILL BE TAKEN CARE OF AS FULLY AS POSSIBLE BY AMENDING ARTICLE 39(9) TO COVER ALL PERSONS SUBJECT TO THE EXPANDED DEFINITION OF "LIMITATION OF PERSONAL FREEDOM."

14. QUESTIONS RELATING TO VISA RECIPROCITY (PARA 1, REF B) AND EXTRADITION (PARA 3, REF B) CAN BE TOUCHED UPON IN NEGOTIATIONS, BUT ARE NOT APPROPRIATE FOR SUBSTANTIVE REVIEW IN THIS CONTEXT.

15. EMBASSY REQUESTED TO FORWARD COMMENTS PROMISED PARA 4, REF B ON "MORE SERIOUS QUESTIONS" RELATING TO "IMPORT PRIVILEGES STATUS AND OTHER ADMIN. RELATED PROBLEMS."

16. EMBASSY'S RESPONSE TO QUESTIONS RAISED ABOVE WOULD BE APPRECIATED ASAP SO THAT PROGRESS CAN BE MADE TOWARD INITIATING NEGOTIATIONS.

17. RE CONTENTS REF C, DEPT. DOES NOT AGREE WITH AMB. SONBUL'S CONCLUSION THAT "UNDER INTERNATIONAL LAW" CONSULS LIMITED OFFICIAL USE

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ARE ENTITLED TO THE SAME TOTAL IMMUNITY AS DIPLOMATIC PERSONNEL. UNFORTUNATELY, DEPT PERCEIVES OF NO LEGAL BASIS FOR EXTENDING "FULL IMMUNITY" TO CONSULAR OFFICERS IN HOUSTON PENDING CONCLUSION OF BILATERAL CONVENTION.

14. FYI: DURING CALL APRIL 28 ON DEPUTY ASSISTANT SECRETARY SOBER, AMBASSADOR ALIREZA STATED THAT SAG HAS NOT YET OFFICIALLY CONVEYED TO HIM A POSITION ON DRAFT CONSULAR CONVENTION. HOWEVER, HE SAID THOSE WITH WHOM HE HAD BEEN IN TOUCH INFORMALLY WERE "VERY KEEN" TO MOVE AHEAD. CHRISTOPHER

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